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**From:** Sanders, Amy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C8C3424E1C874447AA2629C6EBED66F3-ASANDE02]  
**Sent:** 10/6/2020 3:43:50 PM  
**To:** Newton, Cheryl [Newton.Cheryl@epa.gov]  
**Subject:** FW: Daily News Clippings October 6th 2020 (morning edition)

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**From:** Milanes, Silvia <Milanes.Silvia@epa.gov>  
**Sent:** Tuesday, October 6, 2020 10:42 AM  
**To:** AO OPA OMR CLIPS <AO\_OPA\_OMR\_CLIPS@epa.gov>  
**Subject:** Daily News Clippings October 6th 2020 (morning edition)

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**Pollutants**

[EPA finalizes change to cleanup plan for Superfund site in New Jersey](#)  
[New York Finalizes Regulations To Phase Down HFCs](#)  
[Raking leaves again this fall? Stop right now](#)  
[Superfund Designation Lifted For Part Of Industri-Plex Site](#)

**Agency**

[Aldi Honored for Environmental Moves](#)  
[EPA must modify agrochemical regulatory process to protect bees](#)  
[EPA Releases Draft National Recycling Strategy, open for public comment](#)  
[US Presidential. Climate change: the great schism](#)

**Emissions**

[California's Drive for Zero-Emission Vehicles Continues](#)

**Indigenous**

[EPA grants Stitt request for state oversight on tribal lands](#)  
[EPA Strips Tribes in Oklahoma of Environmental Regulatory Rights](#)  
[Indigenous Leaders Furious After EPA Grants Oklahoma Control Over Sovereign Tribal Lands](#)

**Fossil Fuels**

[The Energy 202: The oil sector's political spending is down during the pandemic](#)

**Water**

[Court deals blow to salt pond development in Redwood City](#)  
[Long Island Sound Report Card shows fewer than half of waterways in good health](#)  
[San Francisco Bay: Cargill's Redwood City development plans dealt setback by court](#)

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**Pollutants**

[EPA finalizes change to cleanup plan for Superfund site in New Jersey](#)  
The U.S. Environmental Protection Agency (EPA) finalized a change to its 1992 plan for addressing groundwater contamination at a Superfund Site in Morganville, New Jersey once operated by Imperial Oil Co., Inc./Champion Chemical.

Groundwater data collected since the remedy for site soils was completed at the end of 2011 indicate that natural processes are effectively reducing the levels of contaminants and that active treatment of the groundwater is not needed. As a result, the agency has decided to rely on natural processes to address the groundwater rather than extract and treat it as the original decision stated.

“Based on our analysis of groundwater data, previous cleanup actions have led to a decrease of contaminant levels and these are continuing to decrease,” said EPA Regional Administrator Pete Lopez. “As part of EPA’s ongoing efforts, monitoring and further studies will be conducted to ensure the effectiveness of the remedy.”

EPA is requiring periodic collection and analysis of groundwater samples to verify that the levels and extent of contaminants are declining, and that people’s health and the environment are protected. The EPA will conduct a review within 5 years to ensure the effectiveness of the cleanup.

EPA held a virtual public meeting in August 2020 to explain its cleanup proposal, discuss the other cleanup options that were considered, and receive public comments. To read the EPA’s selected cleanup plan, outlined in the Amendment to the Record of Decision, and to view EPA’s responses to public comments in the Responsiveness Summary, please visit [www.epa.gov/superfund/imperial-oil](http://www.epa.gov/superfund/imperial-oil).

The Imperial Oil facility, located in the Morganville section of Marlboro Township, operated from the 1950s until 2007. Improper work practices and piles of waste from oil reclamation activities contaminated soil on the plant property, adjacent wetlands, the nearby Birch Swamp Brook, and several adjacent residential properties. Groundwater underlying the site was also contaminated.

The site cleanup was originally overseen by the New Jersey Department of Environmental Protection (NJDEP). The NJDEP cleaned up part of the wetlands and contaminated sediments in the brook and removed some of the oil that was floating on top of the groundwater.

EPA took over the cleanup of the property in 2006 at NJDEP’s request. In 2008, EPA completed the demolition of structures on the site, including all production, storage, and maintenance buildings, as well as above-ground tanks.

In 2011, EPA completed the excavation of the soil and the restoration of the industrial property. The excavated property areas were seeded and restored along with the restoration of the wetlands. In 2013, EPA completed the cleanup of the remaining wetlands and contaminated sediments in Birch Swamp Brook.

#### New York Finalizes Regulations To Phase Down HFCs

Governor Andrew M. Cuomo recently announced that new regulations have been finalized to significantly reduce the use of HFCs in New York State. The Department of Environmental Conservation (DEC) regulations, which were finalized in late September, will adopt Rules 20 and 21 from the Environmental Protection Agency’s (EPA’s) Significant New Alternatives Policy (SNAP) program.

“With these nation-leading actions, New York will help drive manufacturers to adopt better, cleaner products, and pioneer clean energy solutions that not only protect our health and our precious natural resources, but also grow our economy,” said Governor Cuomo.

The new regulations will ban the sale, installation, and commercial use of certain HFC refrigerants in new or retrofitted food refrigeration equipment, large air conditioning equipment (chillers), and vending machines, as well as prohibit substances used as aerosol propellants and foam-blowing agents in new consumer products. The prohibitions will take place over the next four years and are expected to reduce HFC emissions by more than 20 percent of projected levels by 2030, or a cumulative total of 17 million metric tons of carbon dioxide equivalent emissions.

The DEC developed the regulations in collaboration with partner states in the U.S. Climate Alliance, which has grown to include 25 governors. New York joins California and Colorado in finalizing regulations and about a dozen other states that have adopted laws or announced their intention to backstop the EPA program and require the reduction of HFCs. The formal Notice of Adoption is being filed with the Department of State and is anticipated to appear in the October 14, 2020 State Register. The rule will be effective 30 days after filing.

#### **New Initiative**

The State’s recently adopted regulations complement a new \$3 million initiative -- New York State Energy Research and Development Authority’s (NYSERDA’s) Next Generation HVAC Innovation Challenge -- to develop new HVAC systems for buildings. The actions also support the implementation of the State’s Climate Leadership and Community Protection Act, which put New York on the path to reducing greenhouse gas emissions 40 percent by 2030, as well as achieving its mandated goal of a zero emissions electricity sector by 2040 and 70 percent renewable energy generation by 2030. As part of NYSERDA’s multi-round Next Generation Innovation Challenge, the \$3 million available funding will be used to spur development and adoption of new refrigerants that have a less damaging effect on the environment than their

current counterparts. The Challenge supports clean energy companies that want to develop, commercialize, and demonstrate new technologies that improve the performance of advanced HVAC systems and create new economically viable opportunities for energy efficiency in buildings. This funding will be offered through a competitive solicitation process to develop advanced refrigerant monitoring and leak detection solutions, new compressor technologies, in-field leak repair solutions, demonstration and evaluation of emerging technologies, refrigerant capture and recycling, industry collaboration on training, market awareness and product requirements, and overall development of low-GWP refrigerants. While low-GWP refrigerant options exist, their flammability, toxicity, or performance have prevented them from being widely adopted, leaving a gap in the services and technology to bring these alternatives to scale.

"The lack of widespread availability for environmentally friendly refrigerants presents a significant and impactful gap in the market that must be addressed in order to win the fight on climate change," said Doreen Harris, acting president and CEO of NYSERDA. "The Next Generation HVAC Challenge is about changing the market as we seek to limit HFCs in our environment and the way we think about cooling and heating our buildings, which will allow us to make significant progress towards Governor Cuomo's ambitious climate goals."

Applications for the Challenge are due on November 17, 2020, with awards anticipated in the first quarter of 2021.

### Raking leaves again this fall? Stop right now

It's fall and that means leaves are littering lawns around the country.

Time to take out the rake and bag up them up, right? Wrong.

Environmental experts say raking leaves and removing them from your property is bad not only for your lawn but for the planet as a whole.

Although people often rake fallen leaves and send them to a landfill to prevent their lawns from being smothered and to make yards look better, in most cases, you're fine not moving them.

"Just leave them where they are and grind them up," said John Soročan, a professor of turfgrass science at University of Tennessee.

However, if you have a lot of trees dumping leaves or the piles begin to mound up, Dan Sandor, a postdoctoral researcher of turfgrass science at University of Minnesota, advises mowing over the leaves with a mulching blade about once a week.

Here are a few reasons why you shouldn't rake your leaves and other tips to care for your lawn this fall:

#### **Leaves and yard waste take up space in landfills**

According to EPA data, yard trimmings, which include leaves, created about 35.2 million tons of waste in 2017, which is about 13% of all municipal waste generation.

The majority of that – 24.4 million tons – was composted or mulched, the EPA says, yet still, 8.7 million tons went to landfills, accounting for 6.2% of all municipal waste in landfills.

"The worst thing you can do is put (leaves) in bags and send them to landfills," said David Mizejewski, a naturalist at the National Wildlife Federation.

Leaves take up space and they also can break down with other organic waste to create methane, a potent greenhouse gas which contributes to climate change, he added.

#### **Leaving your leaves could make your lawn healthier – and save you money**

Think you need to spend money on expensive fertilizers to keep your grass healthy? Think again, Mizejewski said.

"Leaves cover up root systems, preserve soil moisture, suppress weeds and other plants. They also slowly break down and ... return (essential) nutrients to plants," Mizejewski said. "It's a perfect system. Nothing is wasted in nature."

Don't rake grass clippings, either: Why you should avoid raking grass clippings after mowing the lawn, and more mower taboos.

"It's free fertilizer," Sandor said.

Some leaves, including maples, do a great job of reducing weed seed germination while other species like honey locust add a lot of nitrogen to lawns, Sandor said.

#### **The environment around you depends on your leaves**

Butterflies and songbirds alike depend on leaf litter, according to Mizejewski.

"Over winter months, a lot of butterflies and moths as pupa or caterpillar are in the leaf litter, and when you rake it up you are removing the whole population of butterflies you would otherwise see in your yard," he said.

Without the insects in the leaf litter, you also risk driving away birds that might have come to your yard looking for food to feed their offspring in the spring.

That's especially concerning given a September 2019 study published in the peer-reviewed journal Science which found that North America has lost nearly 3 billion birds since 1970, Mizejewski said.

"Keeping some leaf litter can really benefit these kinds of declining wildlife," Mizejewski said. "This is wildlife conservation on the scale of your lawn."

Sorochan, at University of Tennessee, said keeping leaves on your lawn also has the added benefit of reducing fertilizer runoff.

Algal blooms can kill wildlife and harm human health, and they often form when excess fertilizer runs into waterways. Because leaving leaves on your lawn serves as a fertilizer, if no other fertilizers are added, it will reduce runoff, Sorochan said.

Blowing leaves into the street is also bad, said Minnesota's Sandor. Because leaves have so many nutrients in them, they can break down when they get into sewers and also cause algal blooms in waterways, he said.

#### **But you still might need to do some raking**

While in most cases, your lawn will benefit if you keep the leaves where they fall, some raking may be necessary, the experts agree.

Sandor said leaves and lawns are different shapes and sizes, so there is no one-size-fits-all approach. If it looks like your mower won't be able to handle all the leaves or like your lawn is being smothered, that's when you may need to rake them to thin it out, he says.

If you do remove your leaves, the best thing to do is cut them up and drop them in a plant or flower bed or another part of your lawn that doesn't get leaf cover, Mizejewski said.

That will provide a natural fertilizer and mulch for those parts of your yard. If you're worried the leaves will blow away (though they should be fine), lightly water them, Mizejewski said.

If you don't have a plant or flower bed or have too many leaves, start a compost bin, he and Sandor advise.

Some municipalities also have compost programs, which allow you to send your leaves off and get mulch back, Mizejewski said, but composting at your house is better so you don't have the added pollution of trucks and off-site machines taking and processing the leaves.

"This is about taking baby steps for most people and getting to a maintenance on your yard and garden that is a little bit more environmentally friendly and wildlife friendly," Mizejewski said.

#### Superfund Designation Lifted For Part Of Industri-Plex Site

The 200 Presidential Way parcel is no longer a Superfund Site, the EPA announced. (Shutterstock)

WOBURN, MA — Part Woburn's Industri-Plex site is no longer a contaminated Superfund site, the Environmental Protection Agency determined, Monday.

The 10.7-acre 200 Presidential Way parcel no longer poses human and environmental health concerns, the agency said. That site is no longer restricted to commercial uses.

The remainder of the former glue and chemical plant remains a Superfund site with ongoing health concerns. The state and federal governments have been working on the site since 1980s, due to groundwater and soil contamination.

"EPA is very proud to be taking action to remove a portion of this Woburn, Massachusetts site from the federal Superfund list," said EPA New England Regional Administrator Dennis Deziel in a statement. "We are making good on our commitment to protect the people we serve and support local community revitalization by allowing land to be safely redeveloped for productive use when cleanup measures have been successfully completed."

The EPA estimates that the full site will be ready for reuse in late 2023.

#### **Agency**

##### Aldi Honored for Environmental Moves

In recognition of its continuing commitment to lower overall environmental impact, Aldi has received from the Environmental Protection Agency the 2020 Green Power Leadership Award and a 2019 GreenChill Store Certification, in addition to a Re-Certification Excellence Award for some of its stores.

"We are proud to receive these honorable recognitions from the U.S. Environmental Protection Agency," said Aaron Sumida, VP of Batavia, Illinois-based Aldi U.S. "As one of America's largest retailers, it's important for Aldi to prioritize our adoption of green power usage across our operations, showing others that it's an affordable, accessible choice that can help reduce air pollution and other emissions. We look forward to continuing our sustainability journey by taking intentional and strategic steps to make our stores and warehouses more environmentally friendly."

The annual Green Power Leadership Awards are part of the [EPA's Green Power Partner recognition program](#) that honors green power users for helping advance the development of the United States voluntary green power market. Aldi was one of just four organizations nationwide to receive an Excellence in Green Power Use Award for its dedication to significantly furthering the U.S. renewable-energy market.

Aldi currently buys more than 980 million kilowatt-hours (kWh) of green power annually, which is enough green power to meet more than 100% of its electricity use. The deep-discount grocer is No. 16 on EPA's National Top 100 list of participating companies, No. 3 on the Top 30 Retail list and No. 15 on the Top 30 On-site renewables list. Each ranking shows the EPA Green Power Partners using the most renewable electricity annually as of July 2020.

The [EPA's GreenChill Partnership](#), meanwhile helps supermarkets transition to environmentally friendlier refrigerants, lower harmful refrigerant emissions, and implement greener refrigeration technologies and environmental best practices. Aldi garnered a Store Certification Excellence award for achieving the most GreenChill store certifications in the past year, along with a Store Re-Certification Excellence award in some stores in New York for renewing GreenChill store certifications for five consecutive years. As of December 2019, Aldi operates more than 300 GreenChill-certified stores across the United States, all of which received platinum ratings, the program's highest designation.

"For the second year in a row, Aldi has demonstrated their exceptional leadership in food retail refrigerant management," noted Kirsten Cappel, GreenChill program manager. "In this annual recognition cycle, Aldi certified 331 stores all at the Platinum level – the highest possible certification. This achievement exemplifies the Aldi commitment to sustainable refrigeration management and the use of advanced refrigeration technologies that are better for the environment."

"Aldi has prioritized its people, its communities and the environment since day one," added Sumida. "We are dedicated to reducing our overall environmental impact. From recycling and using solar power to building environmentally friendly warehouses and stores, Aldi is committed to being a more sustainable business."

As part of a [\\$5 billion-plus capital investment](#) in new and remodeled stores across the country, Aldi is beefing up its renewable-energy building elements, including preference for energy-saving LED lighting, energy-efficient refrigerated systems and rooftop solar systems on 12 warehouses and 108 stores, with more installations to come.

With more than 2,000 stores across 36 states, [Aldi U.S.](#) is No. 26 on The *PG 100*, *Progressive Grocer's* 2020 list of [the top food retailers in North America](#). The retailer is on track to become the third-largest grocery retailer by store count by the end of 2022.

#### [EPA must modify agrochemical regulatory process to protect bees](#)

America does not have a great record of licensing of dangerous chemicals used in agriculture. There are [72 pesticides](#) that can be used in the U.S. that have been banned from agricultural use in the European Union because of possible risks to humans and wildlife.

Food production in the U.S. and around the world is dependent on pollination provided by bees and other insects. In fact, it is thought that 1 in 3 mouthfuls of food we eat are dependent on insect pollination. Increasing evidence of bee declines across the U.S. will, therefore, have environmental and economic consequences. We have both selfish and moral obligations to try and help our important pollinators.

Despite this, the Environmental Protection Agency, following instructions from the Trump administration, continues to license new insecticides known to harm bees. One group of insecticides used across the country but is heavily restricted in the EU and Canada is neonicotinoid pesticides. Neonicotinoids are the most commonly used insecticides globally, and [in 2014 they made up 25 percent of global insecticide sales](#). However, evidence of unwanted effects on pollinators led to an agricultural ban on four commonly used neonicotinoids (imidacloprid, thiamethoxam, clothianidin and thiacloprid) in the EU.

Importantly, these bans were put in place because the insecticides have sublethal effects on pollinators such as bees. For example, these insecticides contaminate the nectar and pollen of treated crops where bees and other pollinators feed. Exposure can impair bee foraging, learning and even their ability to fly. They can also reduce bee reproduction, meaning fewer bees in the next generation.

But despite pressure from conservationists and beekeepers throughout America, neonicotinoids have not been banned from agricultural use.

To make matters worse, newly licensed insecticides (such as flupyradifurone and sulfoxaflor) that could potentially replace neonicotinoids [also appear to have similar sublethal effects](#) on bees and other pollinators. This clearly

demonstrates that even if neonicotinoid use were restricted, other insecticides that are harmful to bees would be used instead.

Moving forward, if we want to protect bees and other insects from the unwanted effects of agrochemical exposure, the EPA must ensure that sublethal assessments of newly developed insecticides on wild bees are mandatory within the regulatory process.

The EPA uses toxicity assessments to determine whether novel insecticides kill bees. Although this is important, a dependency on toxicity assessments fails to assess sublethal effects on reproduction, which is unlikely to be assessed before licensing, meaning insecticides will be licensed for use without their sublethal effects on bees being known. If a bee dies, it does not contribute to the next generation. If a bee fails to reproduce, it similarly does not contribute to the next generation. On a population scale, there is no difference.

Another issue is that domestic honeybees are used as a model species in the EPA's regulatory process, with less consideration given to native bees. Honeybees are important for pollination, but they are a managed species and not representative of the 4,000 native bee species across the U.S. Wild bees, such as bumblebees and solitary bees, appear to be more vulnerable to agrochemical exposure than honeybees.

Although seldom in the limelight, native bees are essential for the pollination of commercial crops and wildflowers. They also offer a pollination buffer if commercial honeybee stocks decline or if supply problems arise, such as those seen during the ongoing pandemic. Native bee declines will result in us living poorer lives.

Long-term, intensive agriculture is unsustainable. Policies that encourage farmers to reduce chemical use and promote biological control are essential to halt declines in native bees.

Large changes to farming will take time, but the EPA can buy bees more time by modifying the regulatory process to protect bees better. A failure to implement these changes will result in more insecticides being licensed for harmful environmental effects.

*Harry Siviter is a postdoctoral researcher at The University of Texas at Austin.*

#### EPA Releases Draft National Recycling Strategy, open for public comment

October 6, 2020 - The U.S. Environmental Protection Agency (EPA) released a draft *National Recycling Strategy* for public input in preparation for America Recycles Week and ahead of the third annual Recycling Summit. The draft *National Recycling Strategy* identifies strategic objectives and actions needed to create a stronger, more resilient U.S. municipal solid waste recycling system.

"Over the last two years, we've heard from our partners about the challenges facing our nation's recycling system, and in particular for municipal solid waste recycling" said EPA Administrator Wheeler. "Our strategy aims to move recycling in America forward by identifying actions that all of us – governments, non-profits, private industry, and the public – can take together."

The draft *National Recycling Strategy* was developed as part of EPA's continued leadership in addressing the challenges facing the U.S. recycling system and builds on EPA's 2019 *National Framework for Advancing the U.S. Recycling System*. The strategy organizes high-level actions around three strategic objectives to improve the U.S. recycling system: 1) reduce contamination, 2) increase processing efficiency, and 3) improve markets.

EPA has shared the draft *National Recycling Strategy* for public comment through December 4, 2020, with the goal of finalizing it in early 2021.

To read the National Recycling Strategy and provide comments visit: <https://www.epa.gov/americarecycles/national-recycling-strategy-and-framework-advancing-us-recycling-system>

Recycling is a critical component of the U.S. economy, providing approximately 700,000 jobs and \$37 billion in wages; however, stressing the system are factors such as:

- confusion about what materials can be recycled;
- recycling infrastructure that has not kept pace with today's diverse and changing waste stream;
- reduced markets for recycled materials; and
- varying methodologies to measure recycling system performance.

Recognizing this opportunity for progress, Administrator Wheeler hosted the first America Recycles Day Summit on November 15, 2018. Since then, more than 250 organizations have signed the America Recycles Pledge, promising to work collaboratively to improve the American recycling system. Administrator Wheeler will host the third annual America Recycles Day Summit on November 17, 2020, where he will announce the National Recycling Goals.

## US Presidential. Climate change: the great schism

*"You will see, it will cool down."* California is burning and Donald Trump is looking elsewhere, to borrow the image of the late Jacques Chirac. There is no more vivid image of a form of climate denial than this displacement, in mid-September, of the American president in the most populous state of the country at a time when gigantic fires devastate hundreds of thousands of people. 'hectares. According to the host of the White House, climate change has nothing to do with this extreme phenomenon. It was rather to look on the side of the *"Poor forest management"*, he had let go a few days earlier during a meeting. Problem: 57% of California's forests belong to the federal state, only 3% to that of California.

### Donald Trump "climate arsonist"

Among Republicans, everything is good to deny the reality of climate change and the factor of human activity in it. And anyway, *"It will cool down"*, just as the Covid was supposed to disappear overnight. As the election campaign entered its home stretch, Joe Biden did not hold back his blows and called Donald Trump *"Climate arsonist"*. The results of the latter are quite eloquent: exit from the Paris agreements, lifting of the timid restrictions of the Obama era, systematic agreement given to any economic project to the detriment of the environment (including the Keystone pipeline, for a time blocked by Barack Obama), appointment of climate skeptics to the EPA, the equivalent of the Department of the Environment.

### Joe Biden in the line of Sanders

On the Democratic side, the consideration of climate change has accelerated since 2016, both in reaction to Trump's policy but also and above all due to the rise of a new generation of voters, activists and elected officials who make it the cornerstone of a transformative project. Didn't Alexandria Ocasio-Cortez's first coup in Congress consist in the occupation, along with climate activists, of Nancy Pelosi's office to promote the Green New Deal? This flagship project of the Sanders wing was not reproduced in extenso in the Democratic platform, but entire sections have been incorporated, such as massive public investments and the goal of zero greenhouse gas emissions. here in 2050. For the democratic establishment, the horizon of a "green capitalism" with big tax incentives remains however insurmountable.

## **Emissions**

### California's Drive for Zero-Emission Vehicles Continues

On September 23rd, Governor Gavin Newsom issued a precedent-setting executive order cementing California's continued effort to take the lead on clean vehicle policy. Executive Order N-79-20 establishes as a goal that, where feasible, all new passenger cars and trucks, as well as all drayage/cargo trucks and off-road vehicles and equipment, sold in California, will be zero-emission by 2035. The order sets a similar goal requiring that all medium and heavy-duty vehicles will be zero-emission by 2045 where feasible. These goals will be implemented by the California Air Resources Board ("CARB") through regulations yet to be developed.

Governor Newsom's executive order comes on the heels of the Advanced Clean Trucks Rule, issued by CARB in June. That rule requires that, beginning in 2024, a certain percentage of each truck manufacturer's sales into California must be from zero-emission vehicles with a target that by 2045, all new trucks sold in California must be zero-emission. As noted in a prior update (link: [here](#)), that rule is currently being challenged by a coalition of manufacturers in state court. The executive order and CARB's recently issued Advanced Clean Trucks Rule could significantly reshape all levels of the transportation industry. Together, the executive order and Advanced Clean Trucks Rule would almost certainly have the practical impact of limiting future sales of new vehicles in California to electric vehicles either powered by batteries or hydrogen fuel cells.

### **Implications for National Automotive Policy**

While California is currently the only state to set specific goals for zero-emission passenger vehicles, medium and heavy-duty vehicles, and off-road vehicles and equipment, California's plan could have impacts across the country. Other states are likely to follow California's lead on this issue, and Section 177 of the Clean Air Act allows other states to adopt California's regulations for vehicle emissions provided California has obtained the required waiver from the U.S. EPA under Section 209 of the Clean Air Act. Oregon Governor Kate Brown made a statement in support of zero-emission vehicles and California's executive order, and in July, fifteen states and the District of Columbia signed a nonbinding memorandum of understanding to develop an aggressive plan to ensure that sales of all new medium and heavy-duty vehicles are zero-emission by 2050. The following states are party to that memorandum of understanding: California, Connecticut, Colorado, Hawaii, Maine, Maryland, Massachusetts, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont and Washington.

These states may pass regulations adopting CARB's zero-emission rule for trucks and any future regulations that CARB promulgates with respect to the executive order phasing out new gas and diesel passenger vehicles and equipment. In addition, on September 23rd, Michigan Governor Gretchen Whitmer issued an executive directive setting a goal for the state to become carbon neutral by 2050. While Michigan's plan to meet that 2050 goal is not set to be finalized until 2021, Michigan could look to zero-emission vehicles as part of that plan, as well.

#### **Any Future Regulations under California's Executive Order Are Likely to Face Legal Challenges**

While California's commitment to zero-emission vehicles is ambitious and could have nationwide implications, the plan and implementing regulations are likely to face legal challenges. While the Clean Air Act prohibits state-by-state regulations of emissions, under Section 209 of the Clean Air Act, California was granted authority to enact its own, more stringent mobile source standards for vehicles than those issued by the federal government. However, U.S. EPA must approve a waiver before California's rules may go into effect, which U.S. EPA must grant unless certain limited grounds for denial are met. Prior to 2019, the U.S. EPA had granted all of California's waiver requests. However, in 2019 the Trump Administration withdrew a Clean Air Act waiver issued in 2015 by the Obama Administration to prevent CARB from enforcing more rigorous light duty fuel economy rules on light-duty vehicles. California and a coalition of 22 other states challenged that withdrawal, and the case is currently being litigated in the United States Court of Appeals for the D.C. Circuit.

Based upon statements made by the Trump Administration and industry groups, a formal challenge to any rules implementing the Executive Order appear likely. However, the results of the upcoming election could significantly influence the outcome of such a challenge.

#### **Implications for the Transportation and Equipment Industries and Supply Chain Impacts**

California has now not only committed to zero-emission trucks by 2045 under the Advanced Clean Trucks Rule, but has also signaled commitment to zero-emission passenger vehicles and off-road equipment where feasible by 2035. This broadening of the types of vehicles and equipment planned to be zero-emission could lead to significant design and technology costs for engine, vehicle, and equipment manufacturers that have not already devoted substantial time and money to developing zero-emission solutions. Both battery and hydrogen technologies are dramatic shifts from internal combustion engines, and California's aggressive timeline for the move to zero-emission vehicles and equipment could lead to significant supply chain issues if such technologies are not ready for each of the wide variety of vehicles and equipment produced for sale in California.

In addition, electric vehicles and equipment will require battery packs and replacement batteries. Such batteries do not come without potential environmental impacts of their own, as such batteries will ultimately need to be disposed and/or recycled consistent with federal, state, and local law. The further resolve to transition to zero-emission vehicles demonstrated by Governor Newsom's order will also require California and, where applicable, any following states, to double-down on the installation of electric charging infrastructure and supporting transmission along transport routes and address areas where access to such infrastructure may not be available or difficult to come by. In addition, hydrogen-powered vehicles operate off of fuel cells that generate electricity and require a different fuel storage system. Hydrogen-powered vehicles will also require new fueling stations as well as a new bulk distribution system. How CARB plans to implement the directives of the executive order and how other states will choose to act with respect to zero-emission vehicles remains to be seen; however, there are certain to be implications for parties in the transportation and equipment industries if California's goals are to come to fruition.

#### **Indigenous**

##### EPA grants Stitt request for state oversight on tribal lands

OKLAHOMA CITY (AP) — The U.S. Environmental Protection Agency has approved a request from Oklahoma Gov. Kevin Stitt's administration to allow the state, not tribal nations, to regulate environmental issues in Indian Country, even those lands that may be inside historical tribal reservation boundaries.

Stitt, a Republican, requested the authority in July, shortly after the [U.S. Supreme Court](#) determined that a large swath of eastern Oklahoma remains a Muscogee (Creek) Nation Indian reservation.

In the July 22 letter to EPA Administrator Andrew Wheeler, Stitt requested state authority to administer all EPA programs in areas of the state that are in Indian Country, with a few exceptions.

Wheeler approved the state's request in an Oct. 1 response. It applies to more than two dozen federal environmental programs overseen by several state agencies, including the Oklahoma Department of Environmental Quality, Department of Agriculture, Food and Forestry, Water Resources Board and the Oklahoma Corporation Commission.



The federal law allowing states to seek environmental oversight in Indian Country was authored in 2005 by Oklahoma's Republican U.S. Sen. Jim Inhofe, a staunch ally of the oil and gas industry.

"The underlying law is a one-section provision surreptitiously inserted as a midnight rider in the massive (Safe, Accountable, Flexible, Efficient Transportation Equity Act) of 2005 that treats Oklahoma tribes differently than other tribes throughout the United States," the Muscogee (Creek) Nation said in a statement. "Like the SAFETEA Act itself, this was a swift move meant to circumvent the federal government's trust, duty and obligation to consult with the tribal nations concerned."

Stitt said in a statement Monday that he was pleased with the EPA's decision, saying it would help better protect the state's public health and environment "by ensuring certainty and one consistent set of regulations" for all citizens of Oklahoma, including tribal citizens.

"As Administrator Wheeler's letter correctly points out, the State of Oklahoma did not seek to expand or increase its regulation over new areas of the state, but rather to continue to regulate those areas where the state has consistently implemented these environmental programs under the steady oversight of the U.S. EPA," Stitt said.

The decision drew a swift rebuke from other tribal leaders. Cherokee Nation Principal Chief Chuck Hoskin Jr. said he was disappointed that the EPA ignored his tribe's request to consult individually with the agency about the change.

"Unfortunately, the governor's decision to invoke a 2005 federal law ignores the longstanding relationships between state agencies and the Cherokee Nation," Hoskin said in a statement. "All Oklahomans benefit when the Tribes and state work together in the spirit of mutual respect and this knee-jerk reaction to curtail tribal jurisdiction is not productive."

Stitt, himself a Cherokee Nation citizen, has had a strained relationship with many of the tribal nations in Oklahoma over his attempt to seek a greater share of tribal casino revenue.

The EPA decision was particularly welcomed by the state's oil and gas industry, which was concerned that the Supreme Court ruling in *McGirt v. Oklahoma* could ultimately lead to a patchwork of various tribal environmental regulations across the state, said Brook Simmons, president of the Petroleum Alliance of Oklahoma, an oil and gas industry trade group.

"This decision grants the state no more or no less authority than it had prior to the McGirt decision," Simmons said.

"Since 1947, the state of Oklahoma has had primacy to regulate oil and gas operations in Indian Country. This does not have any new effect on that precedent."

#### EPA Strips Tribes in Oklahoma of Environmental Regulatory Rights

The Environmental Protection Agency has granted Oklahoma environmental regulatory control of nearly all tribal lands in Oklahoma, rolling back sovereign rights for dozens of tribes. The move effectively cancels out many rights that would have been gained after a landmark Supreme Court ruling earlier this year asserted about half of Oklahoma remains Native American land, recognizing a 19th century U.S. treaty with the Muscogee (Creek) Nation. In a statement to news outlet *The Young Turks*, Casey Camp-Horinek of the Ponca Tribe of Oklahoma said, "After over 500 years of oppression, lies, genocide, ecocide, and broken treaties, we should have expected the EPA ruling in favor of racist Governor Stitt of Oklahoma, yet it still stings."

#### Indigenous Leaders Furious After EPA Grants Oklahoma Control Over Sovereign Tribal Lands

In a little-noticed development last week that drew ire after being reported Monday, the Trump administration's EPA granted the state of Oklahoma wide-ranging environmental regulatory control on nearly all tribal lands in the state, stripping dozens of tribes of their sovereignty over critical environmental issues.

*The Young Turks* which first reported the news, obtained a copy of an October 1 letter from EPA Administrator Andrew Wheeler granting a request by Republican Gov. J. Kevin Stitt for control of environmental regulations on tribal land on a wide range of issues, including:

- Dumping hazardous waste—including formaldehyde; mercury; lead; asbestos; toxic air pollutants; per- and polyfluoroalkyl substances (PFAS); pesticides; the herbicide glyphosate, and polychlorinated biphenyls (PCBs)—on tribal lands.
- Underground Injection Control, the EPA's fracking permitting system.
- Protecting major agricultural polluters, including large-scale factory farming operations.

Wheeler's letter acknowledges *McGirt v. Oklahoma*, in which the U.S. Supreme Court ruled in July that much of eastern Oklahoma is Native American land. The new EPA move essentially means the state of Oklahoma now has the same rights

as it did before *McGirt*. Attorney General William Barr has joined Republican leaders in seeking ways to undermine the landmark ruling.

The fossil fuel and industrial agriculture industries wield tremendous power in Oklahoma. The state Capitol—which was built on stolen Indigenous land—sits atop a large oil field and has a working oil rig on its grounds. The names of oil companies are also inscribed inside the building's dome.

The EPA policy change—which affects some 38 Native American tribes—sparked anger among Indigenous leaders. "After over 500 years of oppression, lies, genocide, ecocide, and broken treaties, we should have expected the EPA ruling in favor of racist Gov. Stitt of Oklahoma, yet it still stings," Casey Camp-Horinek, environmental ambassador and elder and hereditary drum keeper for the Ponca Tribe of Oklahoma, told *TYT*.

Camp-Horinek continued:

Under the Trump administration, destroying all environmental protection has been ramped up to give the fossil fuel industry life support as it takes its last dying breath. Who suffers the results? Everyone and everything! Who benefits? Trump and his cronies, climate change deniers like Gov. Stitt, Sens. [James] Inhofe and [James] Lankford, who are financially supported by big oil and gas.

I am convinced that we must fight back against this underhanded ruling. In the courts, on the frontlines and in the international courts, life itself is at stake.

The EPA attempted to assuage tribal leaders in a September 29 summary report in which the agency vowed to adhere to federal law. However, under President Donald Trump, the agency has reversed, or is in the process of reversing, over 100 environmental rules governing clean air and water, toxic chemicals, and more.

The summary report notes that the EPA consulted with 13 Indigenous tribes. It also acknowledges that all of the tribes questioned the limited time and geographical scope of the consultations.

## **Fossil Fuels**

The Energy 202: The oil sector's political spending is down during the pandemic

The oil industry is packing less of a financial punch this election cycle than it did during the last presidential race.

Political spending from petroleum producers, besieged by the coronavirus pandemic, has dipped as President Trump and other Republicans try to retain control of both the Senate and White House.

The drop-off is yet another sign of how fewer Americans driving their cars or flying in planes during the pandemic has crushed demand for gasoline and other petroleum products.

An oil rig in Midland, Tex. (AP Photo/Tony Gutierrez)

The economic slump, in turn, has left oil executives and other employees with less cash on hand to give to President Trump and other petroleum-friendly politicians — all while polling shows a potential blue wave mounting that could put Joe Biden and other Democrats into power.

**The oil and gas industry has spent about \$71 million between January 2019 and June 2020 — roughly 7 percent less than it did four years prior.**

That's according to data collected by the Center for Responsive Politics, a nonprofit and nonpartisan organization that tracks political donations. The totals include donations to campaigns, party committees and outside spending groups such as super PACs.

The drop in money from the oil and gas sector comes even as political spending overall has reached new heights, as the prospect of Trump getting four more years in the White House animates both Democratic and Republican donors to open their wallets.

Out of more than 80 industries tracked by the Center for Responsive Politics, the oil and gas sector dropped from being the ninth-highest in political giving to the No. 12 spot between 2016 and 2020. As in years past, the vast majority of the money from the oil industry — 85 percent — is flowing to Republicans.

**Even though the oil sector is spending less overall on politics, it is still rewarding Trump handsomely.**

Since 2017, the Trump campaign and outside groups supporting him have raised \$12.7 million from the oil and gas sector through the end of August — 18 times as much as the sector gave Trump and pro-Trump groups through the same point in 2016, when he faced a large Republican primary field that divided the oil sector's dollars.

"Obviously he's gotten a lot more support from the industry this time around," said Andrew Mayersohn, a researcher at the Center for Responsive Politics.

While Biden, unlike other Democrats, has promised not to ban fracking, the president has proven to be one of the staunchest political allies of the oil industry, having rolled back drilling regulations and reversed stoppages to pipeline construction put in place by his predecessor, Barack Obama. Biden's plan for tackling climate change, meanwhile, could weigh on demand for gasoline if his administration succeeds in giving car buyers big incentives to buy electric vehicles. One of Trump's energy policies is paying off particularly well. Kelcy Warren, the chief executive of Energy Transfer Partners, the company behind the Dakota Access oil pipeline, contributed \$10 million alone to America First Action, a pro-Trump super PAC, according to Mayersohn.

Among the president's first actions in office was giving the greenlight to that controversial pipeline running from North Dakota to Illinois. Trump's order undid a major decision by Obama to block the oil conduit after protests from the Standing Rock Sioux tribe and other Native American groups. Warren's company declined to comment.

**Still, there have been disagreements between the Trump administration and the industry.**

Oil companies, like many other corporations, have balked at Trump's trade tariffs. And although Trump was able to stabilize oil prices this past spring by getting Russia and Saudi Arabia to agree to cut production, some in the industry would have liked to see more financial support from the federal government after the novel coronavirus took root in the United States.

"I feel like they could have helped more during this downturn," said Dan Eberhart, a prominent Republican donor.

"There was a lot of listening but they never threw us a life raft."

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Eberhart's oil-field services company, Canary, laid off 400 workers after its revenue was slashed in half, he said, though he added he is spending more money on politics during this cycle.

"The level of political giving is fairly robust" given the pandemic, Eberhart said.

President Trump delivers remarks about American energy production in July in Midland, Tex. (AP Photo/Tony Gutierrez) Perhaps no one in the oil industry has Trump's ear like Harold Hamm, founder of Continental Resources, who pressed the administration to shelve protections for endangered species and migratory birds that make drilling more difficult. But the billionaire, whose fracking firm's stock is down more than 60 percent over the year, has spent only around \$190,000 during the 2020 election cycle through the end of August. So far, that's down from the \$559,000 he dished out in 2016 and \$638,000 he spent in 2018. Hamm's company did not respond to requests for comment.

**Overall, the oil sector's drop-off is slight — a sign that it is down but not out as a force in American politics.**

Even with just a month left in the race, that total can still increase. "All it could take is one oil billionaire to give \$50 million to a super PAC," Mayersohn said.

Even so, the industry's candidate at the top of the ballot, Trump, is consistently trailing Biden in polls nationwide and in several key swing states.

Matt Mackowiak, a Texas-based political consultant who has worked for both Republican politicians and energy companies, said the "perception that Biden is likely to win" may be weighing on fundraising.

"This race is still very competitive. I still think Trump can win," Mackowiak said. But he added, "I do think that's part of it."

**Power plays**

**ExxonMobil plans to expand greenhouse gas emissions, according to internal documents.**

Leaked documents obtained by Bloomberg News show that the corporation aims to expand fossil fuel production, increasing its own emissions by 17 percent by 2025, according to a company assessment. This comes even as some of Exxon's competitors, such as BP and Royal Dutch Shell, have announced commitments to reach net-zero emissions over the next three decades.

The increased emissions projections, however, represent emissions only from direct operations by the company and do not include end-use emissions, such as those produced by a vehicle burning gasoline.

The Exxon Mobil refinery in Baytown, Texas. (REUTERS/Jessica Rinaldi)

"That means the full climate impact of Exxon's growth strategy would likely be five times the company's estimate — or about 100 million tons of additional carbon dioxide," Bloomberg reports. "If its plans are realized, Exxon would add to the atmosphere the annual emissions of a small, developed nation, or 26 coal-fired power plants."

A collapse in oil demand has hit Exxon hard during the pandemic, and the corporation was removed from the Dow Jones industrial average earlier this year. Exxon indicated over the summer, however, it intends to merely delay growth plans rather than cancel them, while highlighting recent efforts to curb its methane emissions from its operations.

**The Trump administration is fast-tracking approvals to conduct seismic testing in the Arctic National Wildlife Refuge.**

After an application to conduct seismic surveys of potential oil reserves in the refuge was submitted to the Interior Department in August, sources familiar with the process told Politico that the agency is trying to complete its work in half the usual time. One of the sources said that the applicant Kaktovik Iñupiat Corporation hoped to get surveys underway before the end of the year.

The coastal plain of the Arctic National Wildlife Refuge in northeast Alaska. (U.S. Fish and Wildlife Service via AP) (AP) “Oil companies have long sought access to the pristine region on Alaska’s northern slope, but seismic surveys can cause lasting environmental damage to the tundra and pose risks to polar bears, a federally protected species,” Politico writes.

Critics have suggested that the expedited timeline is an attempt to begin seismic surveys before a possible Biden win. An earlier application for seismic surveys was stalled over concern for polar bears, but the new surveys would cover a smaller portion of the coastal plain.

**The Biden campaign is airing a new climate change ad in Michigan.**

The 1-minute spot features Michigan fruit farmers who say that they have been negatively impacted by changing weather patterns due to climate change.

**The EPA granted the state of Oklahoma control over a wide range of environmental issues on tribal lands.**

“This strips from 38 tribes in Oklahoma their sovereignty over environmental issues. It also establishes a legal and administrative pathway to potential environmental abuses on tribal land, including dumping hazardous chemicals like carcinogenic PCBs and petroleum spills, with no legal recourse by the tribes, according to a former high-level official of the EPA,” TYT reports.

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The decision came after Oklahoma Gov. Kevin Stitt (R) requested greater authority over a range of environmental issues, including hazardous waste dumping, fracking, and pollution standards. An amendment surreptitiously added to a 2005 federal transportation bill by Oklahoma Sen. James Inhofe (R) allows states to seek environmental oversight over Indian country.

**Sen. Lisa Murkowski (R-Alaska) is scrambling to salvage a bipartisan energy package.**

The Republican chair of the Senate Energy and Natural Resources committee was working last week with ranking member Joe Manchin, a Democrat from West Virginia, to secure floor time advance the bill. On Tuesday, however, Sen. Rand Paul (R-Ky.) blocked a unanimous consent procedure that would have allowed for lawmakers to resurrect the bill and vote on amendments, E&E News reports.

U.S. Senator Lisa Murkowski. (REUTERS/Erin Scott)

“Murkowski said it's unlikely the bill will see a vote through regular order before the Nov. 3 elections, which would require either Paul to yield or [Majority Leader Mitch] McConnell to jump through multiple procedural hoops that would likely consume a week of precious floor time,” E&E News writes.

Murkowski has said that she hopes to negotiate a compromise package with the House, which passed its own energy package last month, and push for passage after the elections.

**The union for Environmental Protection Agency workers says the agency’s reopening plan puts them at risk.**

A chapter of the American Federation of Government Employees that represents EPA workers voted unanimously over the weekend to express a lack of confidence in the agency’s reopening plans amid the ongoing pandemic. While the agency has reopened offices around the country, many employees continue to telework on a voluntary basis, the Hill reports.

The union criticized “EPA’s determination to force workers back into EPA facilities for no mission-driven reason, despite agency employees successfully tele-working for months during the pandemic. Unnecessarily forcing EPA workers into offices will inevitably result in the spread of the virus, illness and possibly death.”

**Thermometer**

**Wildfires in California have burned more than 4 million acres.**

The figure sets a “record for the most acres burned in a single year” and “is more than twice the acreage burned in the state’s previous record-worst fire season, in 2018,” our colleague Andrew Freedman writes.

“The 4 million mark is unfathomable. It boggles the mind, and it takes your breath away,” Scott McLean, a spokesman for Cal Fire, told the Associated Press. “And that number will grow.”

The August Complex Fire near Lake Pillsbury in the Mendocino National Forest, Calif. (AP Photo/Noah Berger)

This year was also the first time on record that California has experienced gigafire, a term that refers to a blaze that burns more than 1 million acres. The August Complex has burned that much land and forest around the Mendocino National Forest and is only 54 percent contained.

### **Hotter days are linked to worse performance in schools both in the United States and around the globe.**

An article published in the journal Nature Human Behavior found that for every day over 80 degrees, students saw a decline in standardized test scores, a trend that held across 58 countries, [the New York Times reports](#).

“But when the researchers looked specifically at the United States, using more granular data to break down the effect on test scores by race, they found something surprising: The detrimental impact of heat seemed to affect only Black and Hispanic students,” the New York Times reports.

The researchers behind the study have suggested that this could be because children in minority communities in the United States are less likely to have access to air conditioning or good ventilation systems both at home and at school.

### **Energy transitions**

#### **The Trump administration promised to save coal, but instead saw its fastest decline.**

A three-year intensive effort by the Trump administration to save an Arizona power plant and the Kayenta coal mine that fueled it was no match for economic forces that have decimated the coal industry. Despite close connections with coal executives and lobbyists, the Trump administration oversaw the fastest decline in coal-fuel capacity of any single presidential term, [the New York Times reports](#).

A pile of processed anthracite coal at Superior Coal Prep Plant, Hegins, Pennsylvania. (REUTERS/Dane Rhys)

“To some degree, Mr. Trump was defeated by powerful market forces, primarily, low natural gas prices that made coal a less attractive fuel for power plants and the increasing economic viability of renewable energy sources like solar and wind,” the Times writes. “But an examination of the administration’s efforts to support coal in Arizona and elsewhere, including a review of thousands of pages of emails and other documents obtained under the Freedom of Information Act, also raises questions about whether the president had any realistic prospect of saving the industry or whether he mostly wanted to be seen as trying.”

### **Water**

#### Court deals blow to salt pond development in Redwood City

A federal district court on Monday determined the Cargill salt ponds in Redwood City are covered by federal Clean Water Act protections, adding another barrier to any future effort to develop the site.

The decision by the U.S. District Court for the Northern District of California overturns a determination made in 2019 by the Environmental Protection Agency under the Trump administration, which claimed the salt ponds are not actually “waters of the United States,” but “fast lands” exempt from CWA protections.

“This is an important victory for protecting clean water in our communities. And it’s a good reminder to the Trump administration that it can’t use the San Francisco Bay as its political playground,” said Attorney General Xavier Becerra in a statement.

Becerra and various environmental advocacy groups last year filed a lawsuit challenging the Trump administration’s determination against CWA protections for the salt ponds.

David Lewis, executive director for the nonprofit Save the Bay, described the district court’s decision as “quick and strongly worded.”

“As federal lawsuits go this was a very quick and strong decision,” he said. “The judge said our case was so strong he didn’t need to hold hearings or weigh evidence.”

The EPA under the Trump administration determined the salt ponds are exempt from CWA protections essentially by claiming the water in the ponds is not in fact water, but an industrial by-product, Lewis said. Monday’s ruling is very much at odds with that claim.

“The ponds themselves, however, remain subject to CWA jurisdiction because they are wet (plus they are not uplands). And, they have important connections to the Bay,” the decision reads.

The Trump administration’s determination on the salt ponds was in response to a request by Cargill, which owns the 1,400-acre site, and its developer partner DMB Pacific Ventures.

DMB submitted and then withdrew a proposal to build 12,000 homes on the salt ponds in 2012, but continued to engage the community about future opportunities for the site. That effort was dubbed Reimagine Saltworks.

A representative of DMB said the company disagrees with the district court’s ruling and is reviewing all options moving forward.

"We are disappointed by the district court's ruling on the saltworks site in Redwood City," said David Smith, an attorney for DMB. "We disagree with the court's ruling on critical facts, application of court precedent, and deference to the administrative expertise and authority of the past two administrations to implement their governing regulations. "We are reviewing all options," he continued. "Our focus is on working with our neighbors in the Bay Area to consider all future uses of the site while protecting environmental resources."

Lewis said DMB should give up on its decadeslong effort to develop the site.

"If I were them reading this ruling I'd conclude we won't be able to build on these salt ponds," he said.

Lewis said even if DMB secured approval from Redwood City to develop the site, it'd still need federal permits under the CWA to alter the wetlands "which is very difficult to do" and then "it still needs state agency permits which are even harder than the federal ones."

Lewis wants the salt ponds to be restored to a tidal marsh and protected in perpetuity.

"Cargill should now give the ponds back to the public to be added to the wildlife refuge and permanently protected and restored to tidal marsh," he said. "That's the highest and best use, that's what's best for the Bay and for protecting Redwood City from sea level rise."

#### Long Island Sound Report Card shows fewer than half of waterways in good health

The 2020 edition of the Long Island Sound Report Card contains, for the first time, grades of quality of dozens of bays, harbors and coves, allowing local communities to target problematic waterways, said an official of Save the Sound. Overall the report, released Tuesday, found that "nitrogen pollution remains a major threat to a healthy Sound," resulting in periodic large fish die-offs and seaweed blooms.

"Of the 50 segments monitored across 38 bays, 56% received a "C," "D," or "F." Only six received an "A," the report said.

"This shows the outsized impact that pollution from our communities has on coastal waters, especially where tidal exchange with the open Sound is low and pollutant loads from the rivers and streams is high."

Those findings were possible due to the new system involving local monitoring that breaks the data down to local waterways.

"For the past three report cards, we were just using open water data from the [Environmental Protection Agency]," said Tracy Brown, Save the Sound's regional director of water protection. But officials realized, "that we couldn't really extrapolate from the open water conditions and tell people what their super local water conditions are," she said.

"There was really a data gap."

And since 2017, the nonprofit group, Save the Sound, has started to fill in that gap, with EPA funding and the assistance of 22 "partner groups" in communities to do the monitoring of 38 bays for its biennial Unified Water Study. Because there can be multiple segments of the bays, the 2020 report for the first time gives grades for some 50 bays and bay segments in both New York and Connecticut.

It also found that the condition of the bays was quite variable, sometimes with disparate results from bay segments next to each other.

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"Readers may be surprised that water quality in the bays cannot be predicted by water quality in adjacent portions of the open Sound," the report said. "This emphasizes the importance of local conditions and the role communities play in degrading or improving their coastal water quality."

Rep. Tom Suozzi (D-Glen Cove), in a statement, said: "The Long Island Sound is our national park ... Over the years we have made significant progress by reducing nitrogen loads, restoring habitat, involving and educating the public, and monitoring water quality. But it is clear from this report that there is more to do."

Save the Sound has enlisted the support of local groups monitoring the bays at the same time using the same methods, Brown said. "It's the first time we've had hyper local data — so it's [an] apples to apples" comparison. She invited local groups who want to get involved in the monitoring to contact the group at [savethesound.org](https://savethesound.org).

George Hoffman, whose nonprofit group the Setauket Harbor Task Force, performed the monitoring of the three segments in Port Jefferson Harbor: the middle and outer portions of Port Jefferson Harbor received A grades, while the Inner Port Jefferson Harbor was graded B+.

Hoffman, who lives in Setauket and is coordinator of the task force's water testing program, said Save the Sound invited his group to do monitoring in 2018. "We're all volunteers. We're a citizen-science group. We're not trained scientists but are concerned about the environment," he said.

Heather Johnson is executive director of Friends of the Bay, a conservation group that monitors Mill Neck Creek and Oyster Bay, both graded C+ by the report card; Inner Cold Spring Harbor, graded F; and Outer Cold Spring Harbor, which got a B.

"There's poor [tide] flushing in the inner harbor," Johnson said. "It's the southern part of the harbor and it doesn't have close access to Long Island Sound."

Johnson said several groups have joined together to try to address the issue, starting a community shellfishing gardening project in 2017. She said an adult oyster can filter up to 50 gallons of water a day. "So if you have garden full of oysters, one would hope you would see improvement in water quality," though she added, "It won't happen over night."

Major findings of the 2020 LI Sound Report Card

- \*Of 50 bay segments monitored, 56% received a "C," "D," or "F" grades. Only six received an "A."

- \*Less than half of the bays studied (14 out of 38) are in good health, with a grade of B- or better.

- \* Water quality grades are largely consistent with recent years, trending excellent in the east, where there is lower population density, to poor in the west, where there is population density.

- \*Bays with multiple segments show patterns similar to the larger Sound with inland areas suffering from poor tidal flushing and greater impact from human-sourced pollution.

- \* Excess nitrogen from sewers, septic systems, lawn fertilizer and fossil fuel use are major stressors in some bays.

#### San Francisco Bay: Cargill's Redwood City development plans dealt setback by court

In a significant stumbling block for a long-running effort by Cargill Salt to develop nearly 1,400 acres of San Francisco Bay's shoreline in Redwood City, a federal judge has overturned a Trump administration decision last year that said the property was exempt from the Clean Water Act.

The U.S. Environmental Protection Agency "ignored its own agency regulations" and prior court decisions when it ruled that the waterfront site, located along Seaport Boulevard east of Highway 101, isn't bound by the landmark environmental law, wrote U.S. District Court Judge William Alsup of San Francisco.

The ruling late Monday is a victory for four environmental groups and California Attorney General Xavier Becerra. They sued the Trump administration last year to overturn its decision, which would have made it easier to develop the

property.

REDWOOD CITY, CA - OCTOBER 05: A view of the Cargill Salt crystalizer beds is seen from this drone view in Redwood City, Calif., on Monday, Oct. 5, 2020. A federal judge has overturned a Trump administration decision last year that said the property was exempt from the Clean Water Act, thwarting the effort by Cargill to develop nearly 1,400 acres of San Francisco Bay's shoreline. (Jane Tyska/Bay Area News Group)

**[CLICK HERE if you're having a problem viewing the photos on a mobile device.](#)**

They have argued that the area, which sits at sea level and was once part of San Francisco Bay before it was first diked off in 1902, should be restored to tidal wetlands and returned to natural conditions. They also argue that any attempt to develop the bayfront lands is impractical because of sea level rise that risks flooding it.

"The court's decision means that Redwood City salt ponds are wetlands, protected by federal law," said David Lewis, executive director of Save the Bay. "The ponds belong to San Francisco Bay, and Cargill should return them to the public for permanent protection within the San Francisco Bay National Wildlife Refuge. We're not paving the bay any more."

An attorney for Cargill and DMB Pacific Ventures, the Arizona developer that proposed building thousands of homes on the property a decade ago, said the companies are "disappointed" by the ruling and disagree with the court's conclusions.

"We are reviewing all options," said attorney David Smith of San Francisco. "Our focus is on working with our neighbors in the Bay Area to consider all future uses of the site while protecting environmental resources."

In 2009, Cargill and DMB proposed building 12,000 homes on the industrial salt-making land. The project would have been the largest development on the bayfront since Foster City was constructed in the 1960s. It was withdrawn in 2012 amid opposition from community groups and environmentalists.

Cargill still operates an industrial salt-making plant on the property. Salt is evaporated from bay waters and scraped off muddy "crystalizer beds" there be sold for road de-icing, food and other uses.

Cargill and DMB have not yet issued a new specific development proposal. Last year, Smith said the companies were planning to hold public meetings to gather input. So far, those meetings have not been held.

The decision over whether the property is bound by the Clean Water Act could be worth billions of dollars. The law, passed by Congress in 1972, requires a federal permit to fill in "waters of the United States" which the EPA and courts

have defined as waters which are navigable, once were navigable or could be navigable, along with wetlands adjacent to them and “all waters which are subject to the ebb and flow of the tide.”

Five years ago, during the Obama administration, the Army Corps of Engineers ruled the Cargill property was not subject to the Clean Water Act. But then the regional office of the EPA in San Francisco came to the opposite conclusion. Under the law, the EPA can overrule the Army Corps in special circumstances.

But when the regional EPA office sent its draft decision to EPA headquarters in Washington, D.C., for final approval in late 2016, managers there said that the agency was so busy with the Flint, Michigan, polluted water crisis that it would be months before it could address the Cargill issue.

President Trump won the election, however. He replaced Obama’s EPA leaders. In March, 2019, EPA administrator Andrew Wheeler, a former coal industry lobbyist, signed a 15-page letter that concluded the property “is not subject” to the Clean Water Act’s restrictions on development, in part because it was diked and filled for salt-making before passage of the law.

Alsup, in his ruling, disagreed. He said the site is still connected to the bay by tidal gates and intake pipes, and most important, is wet. He ordered the issue sent back to the EPA for a new decision.

“The salt ponds here at issue have not been dry and have had continuing connections to the bay,” the judge wrote.

As a practical matter, if Trump loses re-election next month, Democrat Joe Biden will replace the top officials at the EPA. If he wins, they will remain in place.

In 2003, Cargill, a private company based in Minnesota, sold 16,500 acres of its salt ponds in the South Bay to the public for \$100 million, setting up one of the largest wetlands restoration efforts ever attempted in the United States.

Since then, state and federal wildlife agencies have been converting much of the land — which includes property in Southern Alameda County and in Alviso — back to wetlands for fish, birds and public recreation.

But the Redwood City site was left out of the 2003 deal. At the time, Cargill said it could be developed more easily than the other properties, many of which were submerged in water. And Sen. Dianne Feinstein, who negotiated the sale, said she couldn’t raise the amount Cargill wanted from Congress to purchase it.